

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RICHARD ALLEN WALKER,

Petitioner,

vs.

DWIGHT NEVEN, et al.,

Respondents.

Case No. 2:13-cv-01099-APG-VCF

ORDER

Petitioner has submitted a first amended petition (Dkt. #55). The court has reviewed it pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The court dismisses two grounds for relief. Respondents will need to respond to the remaining grounds for relief.


In ground N, petitioner argues that the denial of a motion for new trial violated the Constitution. A motion for a new trial is a creation of state law. This claim is not cognizable in federal habeas corpus. Poland v. Stewart, 169 F.3d 573, 584 (9th Cir. 1999) (“Federal habeas courts lack jurisdiction, however, to review state court applications of state procedural rules.”). The court dismisses ground N.

In ground O, petitioner argues that the order denying his state post-conviction habeas corpus petition violated both state law and the Constitution. “[A] petition alleging errors in the state post-conviction review process is not addressable through habeas corpus proceedings.” *Franzen v. Brinkman*, 877 F.2d 26, 26 (9th Cir. 1989). The court dismisses ground O.

1 **IT IS THEREFORE ORDERED** that grounds N and O of the first amended petition (Dkt.
2 #55) are dismissed.

3 **IT IS FURTHER ORDERED** that respondents shall have forty-five (45) days from the
4 date of entry of this order to answer or otherwise respond to the first amended petition (Dkt. #55).
5 If respondents file and serve an answer, then they shall comply with Rule 5 of the Rules Governing
6 Section 2254 Cases in the United States District Courts, and then petitioner shall have forty-five
7 (45) days from the date on which the answer is served to file a reply.

8 Dated: September 29, 2014.

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13 ANDREW P. GORDON
14 United States District Judge
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